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WILLISTON ON CONTRACTS, Vol. III, Sec. 1663, states that in cases of this type the United States authorities regard the contract as void, while in England the contrary view is held. The court in the principal case, in referring to the former English decisions, states that equity has taken a different view than the common law, discussing *In re Carew's Estate,* 26 Beav. 187, in which a sale by the court was not set aside, although the two bidders agreed not to bid against each other, but that one should bid up to £1500 and divide the lot between them. They bought it for £650, and the court held that this agreement furnished no ground for opening the bidding or annulling the sale, as there was no fraud, for the reserved price was put at £600. In *Galton* v. *Emus,* 1 Coll. 243, the vice chancellor held that an agreement between two persons who are desirous of purchasing an estate advertised for sale by auction, that one of them shall not bid against the other, is not illegal. In *Levi* v. *Levi,* 6 Car. & P. 239, cited to support the principal case, the jury were directed that an agreement between brokers for stifling competition was an indictable conspiracy. In the United States the courts have disposed of this problem much more effectively. 20 L. R. A. 545, note. In *Doolin* v. *Ward,* 6 Johns. Rep. 194, the Supreme Court of New York decided that such an agreement was void and against public policy as tending injuriously to affect the character and value of sales at auction. The point was decided similarly in *Ralphsnyder* v. *Shaw,* 45 W. Va. 680. The case of *Phippen* v. *Stickney,* 3 Met. (Mass.) 384, points out the true principle by ruling that "an agreement by two or more persons that one of them only will bid at an auction of property, and will become the purchaser for the benefit of them all, is illegal if it is made for the purpose of preventing competition at the bidding and depressing the price of the property below the fair market value. Otherwise, if the purpose of the agreement be to enable each of the parties to become a purchaser, when he desires a part of the property offered for sale and not the whole lot; or if the agreement be made for any other honest and reasonable purpose." The test as applied in *Fisher* v. *Transportation Co.,* 136 Mich. 218, is that "where the circumstances show that the consideration for the promise is in whole or in part an attempt to prevent competition at a public sale, the contract is void," and it would seem as though its application would effectually support the conclusion of the English court and point out the distinction in the cases discussed.

CRIMINAL LAW—POST-DATED CHECKS WITHOUT FUNDS.—A statute provided that the issuance of a check or draft on any bank without authority, when there were insufficient funds to cover the same, should be punishable by fine. D issued a post-dated check without authority or funds and was prosecuted under the statute. *Held,* the statute was not applicable to the execution of a post-dated check. *Smith* v. *State* (Ark., 1921), 226 S. W. 531.

The only question in the case was whether a post-dated check came within the provision "check or draft." The word "check" has generally been held to mean drafts payable presently upon a bank; while the word "draft" includes instruments payable at a future date. Thus, it would seem

that in order to give the word "draft" any meaning at all it must be held to include instruments payable at a future date. See WORDS AND PHRASES, p. 2195; *Hinneman* v. *Rosenbach,* 39 N. Y. S. 98. In the principal case the court decided that a post-dated check was not within the statute because they regarded the statute as being in essence directed against false pretenses, and that a post-dated check merely implied a promise to have sufficient funds in the future. Accord, *State* v. *Ferris,* 171 Ind. 562. But the same court has applied the same reasoning to a check which was not post-dated. *Maxey* v. *State,* 85 Ark. 499; *State* v. *Foxton,* 166 Ia. 181, Ann. Cas. 1916E, 727, *contra;* and if the Arkansas court applies the doctrine of the *Maxey* case, *supra,* to situations arising under the statute, it is difficult to see just what cases the statute will be held to cover.

DAMAGES—BREACH OF CONTRACT WHERE THERE IS NO MARKET FOR THE ARTICLE.—A contracted to deliver to B certain shavings for a specified period at a certain price. There was no established market for such shavings, but B resold some of them to an established customer. After a misunderstanding A repudiated his contract, stopped delivering to B, and thereafter sold the shavings to third parties. In a suit by B for breach of contract, it was *held* that the measure of damages should be based on the difference between the price B paid A and the price B received from his established customer, and not on the basis of the price A received in his new sales after repudiation. *Kennon* v. *Brooks-Scanlon Co.* (La., 1920), 86 So. 675.

The general rule in cases where the article contracted for has no market value is that where the seller contracts to furnish such goods and the buyer resells the goods furnished him, the measure of damages is the difference between the price the buyer was to pay the seller and the price he was to receive in his resales. *France* v. *Gaudet,* L. R., Q. B. 199; *Trigg* v. *Clay,* 88 Va. 330, 13 S. E. 434. The principal case sanctions this rule, but adds a new point. It says that even though the vendor, after wrongfully breaking his contract, by new sales to third parties establishes a market for the article sold, the measure of damages shall still remain the same. It holds that the disappointed vendee should not have the benefit of the vendor's new sales. Although it may seem that such a doctrine allows the vendor to profit by his wrongful breach of contract, on a strict analysis of the true theory of damages the rule seems reasonable and just. Damages should compensate for injuries suffered, and their amount should be established with reasonable certainty. *Brown* v. *Producers' Oil Co.,* 134 La. 672, 64 So. 674. There is no certainty that the vendee could have established the market the vendor succeeded in establishing by his new sales. The vendor's superior salesmanship or facilities may have gotten for him the higher price. What is certain, though, is that the vendee could get the price he did get from his established customer, and this should be the basis of the measure of damages.

DAMAGES—FLUCTUATING EXCHANGE.—A collision occurred between two British vessels in New York harbor, and suit therefor was brought in that